

AG Contract No. KR97 1341TRN  
ADOT ECS File No. JPA 97-73  
Project: 202LMA050/H4314 02C  
Section: SR-202L, Santan Freeway  
56th Street - Price Road Phase II  
IGA-FCD 98028 *C69.99.019.2*

INTERGOVERNMENTAL AGREEMENT  
AMONG  
THE STATE OF ARIZONA  
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY  
AND  
THE GILA RIVER INDIAN COMMUNITY

THIS AGREEMENT is entered into 9 September, 1998 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, among the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, acting by and through its BOARD OF DIRECTORS (the "District") and the GILA RIVER INDIAN COMMUNITY, acting by and through its TRIBAL COUNCIL (the "Community")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The District is empowered by Arizona Revised Statutes Section 48-3603 to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the District

3. The Community is empowered by Tribal Council Resolution, a copy of which is attached hereto and made a part hereof, to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Community

4. Incident to a highway improvement project contemplated by the State on SR-202L (the Santan Freeway), discussions with the Community reveal that the State, the District and the Community have mutual goals and objectives, particularly in the area of drainage, and moreover, that the State's and the District's planned Santan Freeway drainage project parallels the Community's Pima-Maricopa Irrigation Project (P-MIP).

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NO. 22651  
Filed with the Secretary of State  
Date Filed: 09/09/98  
*Betty Gayless*  
Secretary of State

By *Nicky D. Greenwald*

5 Both the State's and the District's project. (Southeast Valley Regional Drainage System (SEVRDS)) and the Community's irrigation project will require significant construction activities within the same region. Therefore in the interest of eliminating the duplication of effort and simplifying both projects, the Community has requested that the District provide construction management for the P-MIP, in matters specifically related to that portion of the P-MIP constructed in its association with the SEVRDS. Both projects not only parallel each other but also cross and share a trench at the I-10 crossing. Impact to the traveling public will be minimized by detouring I-10 and 56th Street just once for both projects. Detour and traffic control, and other common project costs will be shared, as outlined in Exhibit "A", attached hereto and made a part hereof.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

### **1. The Community will:**

a. Upon execution of this agreement and receipt of an invoice from the District, and the District's establishment of an interest bearing account with the Local Government Investment Pool, transfer an amount estimated at \$780,980.00 which is the estimated first quarter scheduled expenditure for the P-MIP construction, plus an eight percent (8%) construction management fee for the District, in an amount estimated at \$62,478.00, totaling an estimated amount of \$843,458.00 for construction and construction management payments. Fifteen (15) days prior to the end of each successive quarter the Community shall, upon receipt of an invoice from the District, transfer sufficient funds to cover the next quarter estimated expenditures for the P-MIP construction. The failure of the Community to transfer the next quarter funds within that 15 day period shall be considered a decision by the Community to suspend the work on the P-MIP as covered by subsection (d) below. Any Change Orders requested by the Community must be requested in writing. The total cost of any Change Orders requested by the Community, plus 8% of the total Change Order costs for construction management will be paid for by the Community as required in this agreement and shall be transferred no later than in the quarter in which the Change Order work is expected to be completed. The Community will receive notice of every disbursement of funds from the account. All interest earned on the account shall remain the property of the Community. The Community shall have the right to audit the account established by the District. Any funds remaining in the District's Account, including accrued interest after the completion of the Community's portion of the construction project, shall be transferred back into the Community's Local Government Investment Pool Account, as per final audit.

b. Costs for any joint work, such as the I-10 crossing, will be proportioned based on Exhibit "A", or other method or procedure mutually agreed to between the parties hereto.

c. Give written notice to the District and the State, if it decides to suspend the work on the P-MIP and cancel further disbursements from the account established in paragraph (a), provided that disbursements for all work committed prior to the notice will be paid.

d. Be responsible for any and all costs, damages, financial injuries or other losses caused by the Community's decision to suspend work on the P-MIP and shall indemnify and hold the District harmless for any and all damages, costs, financial injuries or other losses the District may incur in suspending the work on the P-MIP portion of the contract.

e. Upon completion and acceptance in writing of the P-MIP project, the Community will take over operation and maintenance of the P-MIP.

f. Agree that neither the State nor the District shall be liable for damages to a third party caused by the operation of the P-MIP.

2. The State will:

Provide inspection and approval of the completed P-MIP crossing of the I-10.

3. The District will:

a. Include in the SEVRDS Phase 2 construction contract the portion of the P-MIP alignment from east of the Union Pacific Railroad to west of Interstate 10, as requested by the Community and the State, and will provide construction management services for such requested construction. The total cost for such construction activities will be reimbursed to the District by the Community in accordance with this agreement and Exhibit "A", plus reimbursement for construction management at a rate of 8% of the construction cost for the P-MIP project

b. Act as contracting agency for the construction of the P-MIP project and perform all services necessary to administer construction, including, but not limited to, the following described in paragraphs c. through i. below:

c. Issue invitations for bids; receive, protect and open bids; determine the lowest responsible and responsive bidder; award the contract; and issue the notice to proceed.

d. Provide the construction management of the P-MIP project using in-house staff or a consulting firm.

e. Provide for facilities and personnel to carry out the necessary work of contract administration.

f. Pay the contractor as provided in the contract(s).

g. Advise, consult with, and seek written concurrence from the other parties to this agreement within five (5) working days on any matters in which the other parties to this agreement could have a financial interest. If concurrence is not obtained within ten (10) working days, it is agreed that work shall proceed while attempts at reaching concurrence are made.

h. Coordinate the final inspection of the P-MIP project with the other parties to this agreement to enable their participation so as to determine whether all work has been performed in accordance with contractual requirements and obligations

i. Take reasonable and necessary action to dispose of all contractual and administrative issues arising out of any contracts awarded by the District under this agreement. This includes, but is not limited to, disputes, claims, protests of award, and source evaluations.

j. Agree that to the extent the contractor provides general, automobile and professional liability insurance, the parties to this Agreement will be named as additional insured on those policies.

k. Provide record drawings of all new construction to the other parties to this Agreement at the completion of the P-MIP.

I. Participate, as necessary, in the public involvement activities which are conducted by the State and the Community.

### III. MISCELLANEOUS PROVISIONS

1. During construction the District, the Community, and the State (for the I-10 crossing), will inspect work done for the P-MIP.

2. This agreement shall remain in force and effect until completion of said P-MIP project, provided, however, that this agreement may be cancelled at any time prior to the commencement of performance under this contract, upon thirty (30) days written notice to the other party.

3. This agreement shall become effective upon filing with the Arizona Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 pertaining to audit are applicable to this contract. The Community and the District shall have like rights regarding state and contractor records pertaining to this agreement and the SEVRDS project.

#### 6. Arbitration

6.1 In the event of any dispute which may arise out of this agreement, the parties agree to subject themselves to the jurisdiction of the Phoenix Region of the American Arbitration Association ("AAA") and submit such dispute to arbitration administered by the AAA. The parties agree that such arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §9et seq. If there are two parties to the claim, claims will be submitted to a panel of three (3) arbitrators, majority of who will render a decision and/or award. If all three (3) parties are involved, a panel of four (4) arbitrators a majority of whom are required to render a decision or award.

6.2 The party or parties desiring to submit any controversy to arbitration will do so by written notice to the other party or parties. The notice will include the following items: (1) the party's position as to the matter(s) in controversy, (2) the factual and legal basis for compensation for the claim, (3) the basis for any extension of time and scheduled completion date, (4) the party's estimated time for hearing, and (5) the party's choice of arbitrator.

6.3 Each arbitrator will be a person qualified, by profession or experience, with the issues in controversy. The State, the Community and the District, will each select an arbitrator, if a party to the arbitration, who will not be an employee, State resident, or representative of the State, or member or representative of the Community or employee, State resident or representative of the District. The third arbitrator, if two parties are involved and the fourth arbitrator if all parties are involved, will be selected by the AAA.

6.4 Within ten (10) working days after receipt of such demand and notice for arbitration, each responding party will provide a written summary of its position, the basis for rejection of the opposing party's claim, time extension or other relief, and its choice of arbitrator.

6.5 In the event any party fails or refuses to respond to a demand for arbitration or to appear for the first scheduled hearing, the arbitration hearing will be scheduled as soon as

the arbitration panel can convene or reconvene. In such event, notice of a scheduled hearing will be sent to the non-responding party or parties, by registered mail, return receipt requested and by telefax. Should the non-responding party or parties fail to appear after receipt of notice, the party or parties attending will have an award by default in its favor by the arbitration panel in the amount prayed for in the papers submitted pursuant to subparagraph 6.1.

6.6 The arbitrators or arbitration panel will be required to render a decision based on the evidence the parties enter into the record at the arbitration hearing. If the arbitrators do not base their decision on the evidence entered into the record, the decision will be subject to review pursuant to 9 U.S.C. §10 of the Federal Arbitration Act. The arbitrator's decision will be certified by the AAA.

6.7 The arbitrators will render an independent review of the claim(s) presented; and each arbitrator will act independently and will not be any party's representative. The arbitrator's deliberations are confidential and will not be disclosed to third parties. Each arbitrator and his affiliates and Firm will be disqualified as a witness, consultant or expert for either party in this or any other dispute agreement. No party will engage in ex parte communications with the designated arbitrators. This prohibition does not apply to routine requests for fees and expenses to be borne by the parties. No written communications will be made between the arbitrators and a party without the other party receiving a copy, and no oral communications will take place without the other party being present.

6.8 The arbitration panel will be required to render a decision and award within thirty (30) days after the close of the hearing.

6.9 The fees and expenses of the arbitration panel will be shared equally by the parties to the arbitration.

7. This agreement shall be construed in accordance with Arizona law and any legal action except arbitration thereupon shall be initiated in the United States District Court of Arizona.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Flood Control District of Maricopa County  
Chief Engineer and General Manager  
2801 W. Durango St  
Phoenix, Arizona 85009

Gila River Indian Community  
Director, Department of Land and Water Resources  
PO Box E  
Sacaton, AZ 85247

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under their respective laws to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**

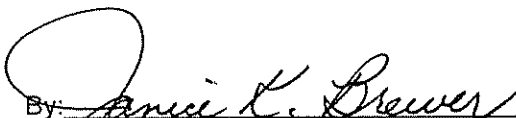
a Municipal Corporation and Political  
Subdivision of the State of Arizona

Recommended:

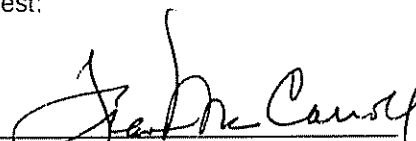
By:   
MICHAEL S. ELLEGOOD, P.E.  
Chief Engineer & General Manager

Aug 10, 1998  
(DATE)

Approved and Accepted:

By:   
JANICE K. BREWER  
Chairman, Board of Directors

Attest:

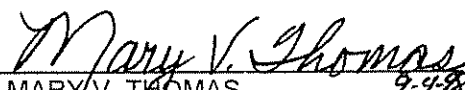
By:   
Clerk of the Board  
SEP 02 1998

The forgoing Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

By:   
District, General Counsel

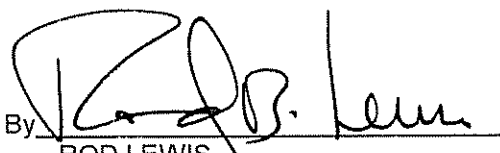
8/7/98  
(DATE)

**GILA RIVER INDIAN COMMUNITY**


By:   
MARY V. THOMAS  
Governor

By:   
KIMBERLY ANTONE  
Community Council Secretary

ATTEST

By:   
ROD LEWIS  
Tribal Attorney

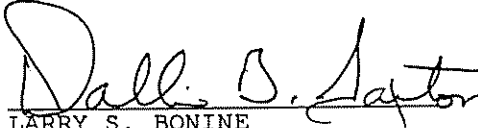
**STATE OF ARIZONA**  
Department of Transportation

By:   
VICTOR M. MENDEZ, P.E.  
Deputy State Engineer

RESOLUTION

BE IT RESOLVED on this 26th day of June 1997, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Gila River Indian Community for the purpose of defining responsibilities for acting on behalf of the Tribe in conjunction with the Flood Control District of Maricopa County in furtherance of the States SR-202L drainage project and the Tribes Pima-Maricopa Irrigation project.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.

  
for LARRY S. BONINE  
Director

**EXHIBIT A**  
**IGA 97-73**  
**Pima-Maricopa Irrigation Project and**  
**Santan Channel Project, Phase 2 (SEVRDS)**

All costs are based on the approved Contractor's Bid

**I. P-MIP/SANTAN Shared Items**

The following items will be billed to the P-MIP or SANTAN project as a percentage of the individual project total divided by the combined project total

1. NPDES/SWPPP Permits
2. Mobilization

**II. Equally shared items - 50% P-MIP, 50% SANTAN**

- 1 Partnering
- 2 Project signs
- 3 Traffic Control at 56th Street
- 4 Traffic Control at I-10
- 5 56th Street Detour
- 6 I-10 Detour
- 7 San Carlos Indian Irrigation Project power pole relocation
- 8 Union Pacific Railroad remove and replace track

**III. The I-10 Crossing**

The following P-MIP and SANTAN items will be constructed in a common trench for the I-10 crossing. The contractor will be directed to divide the cost of the shared volume of excavation and backfill within the common trench between the P-MIP and SANTAN projects as follows.

- 25% (P-MIP) Reinforced Concrete Pipe (1370 mm), LM
- 25% (P-MIP) Reinforced Concrete Pipe (2130 mm), LM
- 50% (SANTAN) RCBC 2 (2-3 048m x 2 438m, Type IV), LM

Cross-sections showing the shared volume for excavation and backfill will be included in Appendix A of the Special Provisions. The above allocation formula will be included in Subsection 104.1 of the Bid Documents directing the contractor to prepare the bid in this manner.





GRANT WOODS  
ATTORNEY GENERAL

STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
1275 WEST WASHINGTON, PHOENIX 85007-2997

TRN Main: (602) 542-1680  
Direct: (602) 542-8837  
Fax: (602) 542-3646  
MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

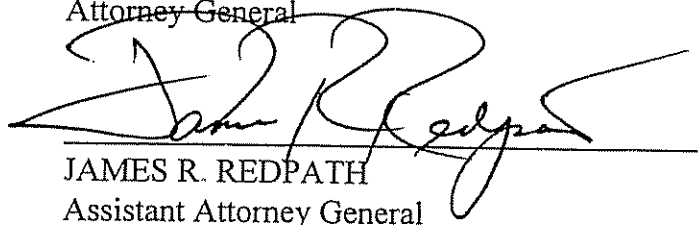
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR97-1341TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATE September 9, 1998.

GRANT WOODS  
Attorney General

  
JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:et/15032

Enc.